

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BEVERLY ALKOW, et al,

CASE NO: 07-2285 (GBD)

Plaintiffs,

vs

LOUIS J. PEARLMAN, et al.,

Defendant.

**DEFENDANT FIFTH THIRD BANK'S MEMORANDUM
OF LAW IN OPPOSITION TO MOTION FOR MISCELLANEOUS
RELIEF BY PLAINTIFFS DATED OCTOBER 2, 2007**

Defendant, Fifth Third Bank, opposes Plaintiffs' Motion for Miscellaneous Relief dated October 2, 2007. In Plaintiffs' Motion, Memorandum and the Declaration filed on October 2, 2007, apparently counsel for Plaintiffs overlooked and/or forgot that on August 23, 2007, this Court granted Defendant, Fifth Third Bank, an unopposed enlargement of time until 20 days after this Court's decision on whether to bifurcate the venue issues raised by the State of Florida Defendants to file its response to Plaintiffs' Complaint. A copy of this Court's "so ordered" letter is attached hereto as Exhibit A. This Court announced at the hearing on August 28, 2007, that it would not bifurcate the hearing on the State of Florida's motions. Therefore, Fifth Third's response became due 20 days after that date, September 17, 2007. On September 17, 2007, the Motion to Dismiss was filed but apparently misfiled and therefore refiled, at the request of the Clerk, on September 18, 2007. Mr. Fagan's response was thus due on October 1, 2007.

Rather than respond on October 1 or contact counsel and seek an extension, Plaintiffs, through Fagan, filed their Motion for Miscellaneous Relief, misstating the facts regarding the timing of Defendant Fifth Third's Motion to Dismiss and accusing Fifth Third of improper

motives and procedural improprieties. Further, Plaintiffs have made no attempt to respond to Defendant Fifth Third's Motion to Dismiss, now fully 32 calendar days after it was filed.

Thus, while Fifth Third has no objection to a brief extension, it objects to the open-ended relief apparently sought by Plaintiffs and asks this Court to order Plaintiffs to respond within some reasonable number of business days (perhaps 5) as they have had the motion for over a month.

Respectfully submitted,

/s/ Margaret D. Mathews

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Certificate of Service

I HEREBY CERTIFY that I filed a true and correct copy of the foregoing with the CM/ECF system which will send a notice of electronic filing to:

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this 19th day of October, 2007.

/s/ Margaret D. Mathews

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